

SECOND DIVISION

[G.R. NO. 149379, June 15, 2006]

**PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, INC.,
PETITIONER, VS. HOMER IMPERIAL, RESPONDENT.**

DECISION

AZCUNA, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court seeking the nullification of the decision and Resolution dated December 20, 2000 and December 8, 2001, respectively, of the Court of Appeals in CA-G.R. SP No. 57807, entitled "Homer Imperial v. National Labor Relations Commission, et al.," declaring herein respondent Homer Imperial as having been illegally dismissed from employment by petitioner Philippine Long Distance Telephone Company, Inc. (PLDT).

The facts of the case are as follows:

Respondent Homer Imperial worked with petitioner PLDT since October 16, 1985. His initial position was a lineman helper and he was thereafter promoted to Job Grade II and Job Grade III with a total monthly compensation of P11,000.^[1]

During his employment, Imperial was given a provincial assignment at petitioner's Malolos, Bulacan Exchange Branch. He was, however, re-assigned to the Makati Reposo Branch on September 1, 1992.

On the morning of September 1, 1992, Imperial was ordered by petitioner's Senior Line Foreman Antonio Calderon to drive the service vehicle, Fleet No. 1949, of the group of Foreman Victor Buenaventura, Wilfredo Barroga and Rommel Cruz to recover^[2] cable wires in Tipas, Taguig, Metro Manila.

About 457 feet of cable wires cut into three rolls were recovered by the group. On their way back to the warehouse, however, the vehicle the group was riding was allegedly having a mechanical malfunction. This prompted Buenaventura to order the unloading of 254.3 feet of the recovered cables, which was valued at P26,900, from their service vehicle at a nearby house located at No. 4 Manalo St., Tipas, Taguig, Metro Manila, owned by the spouses Francisco and Edwina Flores. Francisco Flores at that time was an employee of petitioner PLDT.

After unloading, the group proceeded to Ortigas Extension, Taytay, Rizal, to recover messenger wires. Except for the 254.3 feet of cable wires, the rest were delivered by the group of Buenaventura to the PLDT warehouse along Reposo, Makati City.

Acting on an alleged report more than a week later or on September 11, 1992, operatives of the PLDT Security Department, accompanied by members of the Taguig Police Force, retrieved from the house of Flores the roll of cable that was

unloaded from the service vehicle by the group of Buenaventura. Flores was then summoned to the police station for questioning.^[3]

Subsequently, the Taguig Police Station endorsed a case for Qualified Theft before the Office of the Provincial Prosecutor of Rizal against respondent Imperial, Rommel Cruz, Wilfredo Barroga, Victor Buenaventura and Francisco Flores for appropriate action.

In their "Pinagsanib na Sinumpaang Salaysay" dated October 29, 1992, respondent Imperial, Wilfredo Barroga and Rommel Cruz stated that the service vehicle sustained a "sliding clutch" necessitating for them, upon the instruction of Buenaventura, to unload the cables in the Flores residence.

During the company-level investigation, however, respondent Imperial, Barroga and Cruz submitted a joint written explanation on December 15, 1992 regarding the incident stating that due to the heavy weight of the cable wires, Foreman Victor Buenaventura ordered them to unload a portion of the cable wires from the service vehicle. Upon unloading, he proceeded to a nearby house owned by the spouses Flores. After talking to Edwina Flores, he went back to his group and instructed them to leave the 254.3 feet of cable wires at the Flores house.^[4]

Meanwhile, Prosecutor Leodegario C. Quilatan recommended that an Information for Qualified Theft be filed against Imperial, Victor Buenaventura, Wilfredo Barroga, Rommel Cruz and Francisco Flores. This was approved by Provincial Prosecutor Mauro Castro. Accordingly, an information for qualified theft was filed before the Regional Trial Court of Pasig City, and the case was docketed as Criminal Case No. 96-739.^[5]

On March 5, 1993, petitioner terminated the employment of all the accused in view of the afore-stated criminal case and the conflicting explanations and statements made by the employees concerned. Said action by petitioner was also bolstered by the fact that on September 2, 1992, Barroga filed Vehicle Trouble Repair Report No. 69537 for Fleet No. 1949, detailing that the defect of the vehicle was on the muffler.

The trial court, however, acquitted respondent and the rest of the accused of the offense charged for insufficiency of evidence.^[6]

On March 26, 1996, respondent Imperial filed a Complaint for Illegal Dismissal before the Department of Labor and Employment, docketed as NLRC NRC Case No. 03-02046-96, against petitioner PLDT. Respondent Imperial prayed for: (1) reinstatement without loss of seniority rights; (2) payment of the corresponding backwages of P11,000 per month plus the regular monthly or yearly increases from March 25, 1993 until his actual reinstatement; (3) moral damages in the amount of P1,000,000; and, (4) P500,000 as exemplary damages.

On March 10, 1998, Labor Arbiter Donato G. Quinto, Jr. rendered a Decision, the pertinent portion of which reads:

After an objective evaluation of the pleading, including the documentary evidence adduced by the parties, we are of the opinion that the

complainant was dismissed for a just cause.

It appears that on September 1, 1992, the complainant was assigned by Coordinator Antonio Calderon to go with the group of Foreman Victor Buenaventura to recover cable wires in Tipaz, Taguig, Metro Manila. Complainant was the driver of their vehicle (Fleet No. 1949). About 457 feet of cable wires were recovered by the group which were cut into three (3) rolls. Except for the rolled 250 (254.3) feet cable wires, which found its way into the house of Edwina Flores, the rest were delivered by the group to the PLDT warehouse. As to why the 250 feet cable wires were unloaded from their service vehicle and stored in the house of Edwina Flores, the explanations of the complainant are at variance. Complainant along with his companion[s], Rommel Cruz and Wilfredo Barroga, explained on October 29, 1992 that their service vehicle sustained sliding clutch (Annex "4", respondent's position paper). Then on December 5, 1992, complainant together with Rommel Cruz and Wilfredo Barroga claimed that "due to heavy load, the vehicle (Ford Fiera) cannot contain the cables (Annex "3", Ibid).

Considering this glaring inconsistency and contradiction, we find the declaration of the complainant that the 250 cable feet wires [was] unloaded from their service vehicle for safekeeping in the house of Edwina Flores to be self-serving. As such, it has no probative value.

There is no doubt that the defect on the service vehicle is only on the muffler. This can be gleaned from the Vehicle Trouble Repair Report No. 69537 dated September 2, 1992 prepared by Wilfredo Barroga himself (Annex "5", Ibid). Certainly, such defect will not incapacitate the service vehicle from transporting the 250 feet cable wires to the PLDT warehouse. This explain(s) why the complainant and his group even proceeded to Ortigas Extension, Taytay, Rizal on the same day aboard the same service vehicle to recover messenger wires and was able to return to the office aboard the said vehicle. As driver of the said vehicle, complainant must be aware that the 250 feet cable wires can be transported directly to the warehouse without need of dropping them to the house of Edwina Flores. If complainant is really innocent as he professes to be, he should have defied the instruction of Foreman Buenaventura to bring the cables to the house of Edwina Flores and insist that the cables be brought directly to the warehouse.

The complainant even went to the extent of misleading this Office by alleging that Foreman Buenaventura made a report on the 250 feet cables found in the house of Edwina Flores. Records tend to show that he (complainant) already knew as early as October 24, 1992 that Foreman Buenaventura did not make a report on the said cables. Thus, the complainant alleged, among others, in their "Pinagsanib na Sinumpaang Salaysay" (Annex "4", Ibid.) that: "5. Na kung hindi ini-report ni Foreman Buenaventura (ang) pagkakaiwan ng kableng iyon sa bahay ni Edwina Flores o kung wala siyang hakbang na ginagawa upang kunin ang nasabing kable, siya na po ang dapat managot or mag-explain at hindi namin alam kung ano ang nasa kanyang isipan."

Even Foreman Buenaventura himself rebuked the complainant by declaring categorically that he did not make a report on the cables left in the house of Edwina Flores. Thus, Foreman Buenaventura declared on September 5, 1992, that: "Gusto ko lang po idagdag kaya po hindi nabalikan ang nasabing cable dahil wala po akong sasakyan at hindi ko na rin nareport na may iniwan akong kable sa bahay nila Mrs. Edwina Flores sa aking supervisor na si Mr. Expedito Gudawen dahil naghahanap ako ng sasakyan na mahihiram." (Annex "1-A", No. 13, Reply to the position paper of the complainant).

On the other hand, the evidence submitted by the respondent substantially proves that the complainant is involved in [the] pilferage of the 250 feet cable wires. He (complainant) was one of those who unloaded the cable wires from their service vehicle and then stored them in the house of Edwina Flores. This was borne out (sic) by the statement of his companion, Mr. Rommel Cruz (Annex "2", No. 6, Reply of the respondent) and by the memorandum of Prosecutor Leodegario Quilatan recommending that a criminal information for Qualified Theft be filed against complainant Imperial and his companion, namely: Victor Buenaventura, Rommel Cruz, Wilfredo Barroga and Francisco Flores (Annex "7," respondent's position paper). The cable wires remained in the house of Edwina Flores until it was retrieved therein by operatives of the PLDT Security Department and Taguig Police Force on September 11, 1992.

In a desperate attempt to conceal his liability, the complainant presented Cable Recovery No. 40726 (Annex "B-1," Affidavit of the complainant) which shows that Foreman Buenaventura allegedly turned over to the warehouse 250 feet cables on September 4, 1992. However, we found the Cable Recovery No. 40726 to be questionable. As correctly pointed out by the respondent, "How then can foreman Buenaventura return the questioned cables to the warehouse on September 4, 1992 when in fact it was still in the house of the spouses Flores and was only recovered therefrom by the police on September 11, 1992?"

WHEREFORE, foregoing premises considered, judgment is hereby rendered dismissing the instant complaint for lack of merit.^[7]

Respondent appealed the above decision to the National Labor Relations Commission (NLRC) arguing that the Regional Trial Court of Pasig City acquitted him and his co-accused in the aforementioned criminal case filed against them by petitioner PLDT for insufficiency of evidence. He added that being a driver who was merely assigned to drive the group of Buenaventura that day, he was not responsible for making a report and should not be held accountable for any recovered cable.^[8]

On December 29, 1999, the NLRC issued a Resolution dismissing Imperial's appeal for lack of merit and affirming the decision of the labor arbiter, thus:

x x x

Complainant therefore, cannot solely rely on the reasonable doubt which led to his acquittal in the aforesaid criminal case and pray that because

of the existence of such doubt, this complaint shall be resolved in his favor. Such proposition cannot be applied in this jurisdiction. As correctly found by the Labor Arbiter, there is on record substantial evidence sufficient to warrant complainant's valid dismissal. And as defined by the Supreme Court, substantial evidence is such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

Moreover, the High Tribunal [as] aptly observed that "the Labor arbiter, as trier of facts in the arbitral proceedings below, is at a vantage position offering him the first-hand opportunity to come out with credible factual findings x x x." Hence, the findings of the Labor Arbiter should be respected and left undisturbed there being substantial evidence to support them.

WHEREFORE, all the foregoing premises considered, the appealed decision is hereby AFFIRMED and the appeal DISMISSED for lack of merit.^[9]

Maintaining that a motion for reconsideration of the above resolution was unnecessary as the issues that would have been raised therein will only be a reiteration of the matters that had been passed upon and concluded in the NLRC, Imperial filed a Petition for Certiorari with the Court of Appeals alleging grave abuse of discretion on the part of the NLRC.

Declaring Imperial's failure to file a motion for reconsideration of the NLRC decision as a fatal procedural defect, the Court of Appeals, in its Resolution, dated June 9, 2000, dismissed the petition.

On July 19, 2000, however, the Court of Appeals reinstated the aforesaid petition. The court *a quo* pointed out that the non-filing of the motion for reconsideration before the NLRC falls "within one of the exemptions of exhaustion of administrative remedies, that is, where the matters to be raised in the motion for reconsideration have already been raised and passed" upon by the NLRC.^[10]

After reviewing the merits of the case, the Court of Appeals, in its assailed Decision, dated December 20, 2000, reversed the ruling of the NLRC, thus:

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[T]his court is convinced that petitioner merely acted according to the instructions of BUENAVENTURA. Petitioner's act of helping the other members of the group in unloading the cables is but logical and natural for him to do, especially that the same was done upon orders of his Foreman at that time, BUENAVENTURA, and that act of helping is by itself does not prove that petitioner had conspired with BUENAVENTURA or any members of the team. Accordingly, the statement of private respondent that he helped in unloading the cables cannot be relied upon to establish the alleged dishonesty of petitioner.

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